The Politics of Land Reform: Tenure and Political Authority in Rural Kwazulu-Natal

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When South Africa’s land reform programme finally reached rural Umbumbulu, a potential for conflict over land emerged unexpectedly. Strategically located near a major urban centre, residents of this region have long relied on wages and social welfare grants. Land was valued primarily for residential security and as a symbolic representation of community membership, rather than for productive purposes. This emphasis on community membership, however, created the potential for conflict when a local chief challenged a civil society group over their authority to claim land. With the government’s continued hesitancy to challenge the authority of chiefs, land reform provided an opportunity for local chiefs to reinforce their position and potentially to expand the amount of land under their jurisdiction. This agenda conflicted both with the government’s interest in developing commercial agriculture and local residents’ desire for rural land as security in the context of high levels of unemployment.

Keywords: land reform, land tenure, customary authority, KwaZulu-Natal

INTRODUCTION

We are here to talk about a very important and sensitive issue. Today God has brought us together that we may share our different views on the land which was taken away from us without any notice. It was very disrespectful to the amakhosi what Afrikaners did to us, taking away our beautiful land and sending us to live among the cliffs and uneven land.
We are doing this to help each other get our land back, and we are helping the amakhosi of that time to have their dignity restored, for the grandfathers and grandmothers who were abused, physically and emotionally, by being removed from their homes. We are doing it so that they can be proud that the children of today still remember how their grandparents suffered. So today we all have to work together because this is not the inkosi’s land alone, neither is it the community’s, but it belongs to both the inkosi and the community. (Translation of a public meeting in oGagwini on 14 May 2005)

In May 2005, in rural oGagwini, just south of Durban in KwaZulu-Natal, an urgent meeting was called by the local customary leader, Inkosi Mkhize, to discuss how those present at the meeting might insert themselves into South Africa’s land reform process. Some years after the end of apartheid and without any sign of land redistribution in the region, Inkosi Mkhize and other local leaders had stopped working on the land claim that they had begun to file on behalf of the people of eMbo-Timuni. Then, in 2005, as the attention of the provincial Department of Land Affairs (DLA) turned towards this rural region in southern KwaZulu-Natal, these same customary leaders scrambled to reengage with the process. As they soon discovered, however, most of the privately-owned commercial sugarcane farms bordering eMbo-Timuni were already being claimed by a civil society group known as the Masibuyele Emakhaya Community Trust, led by a man named M. J. Mkhize. The Masibuyele Trust was distinctly different in form and composition from the small group that gathered at oGagwini on that day in May. OGagwini was the home of Inkosi Mkhize, the hereditary leader of eMbo-Timuni, one of the larger Traditional Authorities (TAs) in the region (see map). Only residents of eMbo-Timuni who were under the jurisdiction of the inkosi were present at that meeting. The Masibuyele claimants, on the other hand, were widely drawn from the Umbumbulu and Eston areas and did not share any common identity as members of a TA. In addition, their leader, M. J. Mkhize, did not hold a customary leadership position. Having been formed independently of any state institutions, including those associated with the customary authorities, Masibuyele most closely resembled a civil society group. The group in oGagwini, on the other hand, came together as members of a TA to form a land claim under the leadership of the inkosi.

During the meeting in oGagwini called by Inkosi Mkhize, there was a significant amount of confusion, and ire directed at the figure of M. J. Mkhize from the inkosi, who felt that the Masibuyele claim was a threat to his political authority as an eMbo chief, and also from local residents concerned about being left out of the land reform process. As one customary leader noted, ‘a major portion of our land has already been claimed by an unknown person called M. J. Mkhize . . . this is confusing because we thought the inkosi was the one who claimed the land’. Participants in the meeting discussed at length the implications of the rival Masibuyele claim, touching on issues of jurisdiction over land after apartheid and the possibility of conflicts arising from land redistribution. There was also
Legend

- Traditional Authorities (other than eMbo-Timuni)
- Major Farm Boundaries
- Major Roads

considerable speculation whether M. J. Mkhize’s leadership in the land claim process was a bid for customary power on his part.

Chairperson: If it happens that the so-called M. J. Mkhize owns the land, we would like to see him and we would like him to show us that he is also an *inkosi*. If that is so, he and the *inkosi* would have to talk together as *amakhosi* of eMbo. I would like to ask the *inkosi* to make some kind of arrangement to meet with him. There shouldn’t be any fights even though he came at this in the wrong way. Maybe the *inkosi* can solve this, and we can meet here again, but this time in peace. Thank you.

Mr Dlamini: I would just like to say, let us not be scared because this will lead us backwards. We must not take Mr M. J. Mkhize as our enemy. I have met with him in the meeting we had on Wednesday and Thursday and he is not the problem. I even know his parents. He saw a chance and he took it because he saw that we are ignorant. In other words I don’t think he was fighting with the *inkosi*. His mistake was he did not contact the *amakhosi*. To the *amakhosi*, he is just a stranger. They don’t know him, but he is not an enemy. He was trying to get back the land of our forefathers. Let us not worry about that young man because we will get nowhere. Let us go forward.

Mr Shozi: I think this young boy is trying to take our land. He was at the meetings. I confronted him and he pretended to be an *inkosi*.

Several speakers at the meeting assumed that M. J. Mkhize, by leading a land claim, must be setting himself up as a rival to the *inkosi*, a perception that Inkosi Mkhize clearly shared. Later in the meeting, Inkosi Mkhize threatened that ‘[M. J. Mkhize] must agree to have his name removed from the papers at Pretoria and if he continues with his nonsense, we will kill him’. Another participant at the meeting, Dlamini, suggested alternatively that M. J. Mkhize was not attempting to gain political authority, but was taking advantage of an opportunity to organize people and gain land for the wider black community now that apartheid had ended. Dlamini’s use of terms such as going ‘backwards’ versus going ‘forwards’, and his comment that ‘we are ignorant’, suggested that he was calling upon older divisions between Christianized or ‘modernized’ Zulus, known as the *amakholwa*, and the ‘traditional’ Zulus. By placing M. J. Mkhize within this framework, he was attempting to explain M. J. Mkhize’s negligence in informing the *amakhosi* that he was organizing a claim as the oversight of a more ‘modernized’ Zulu, rather than due to any desire to challenge the ‘traditional’ political authority of the *inkosi*.

Clearly perceiving the potential for conflict, meeting participants also expressed reservations about the benefits of claiming land compared to the disadvantage of being embroiled in a conflict.

Mr Ngcongo: If you want us to register to claim the land, then whose land was it in the first place? If it was the *inkosi*’s land, then it should be his. But
if each person is given a piece of land, we would rather choose the R21,000 [the government’s monetary compensation for restitution claims] because land causes conflicts. When I first came here, people were being killed for the land and so people should forget about claiming the land.

Customary Leader: You are right, the land did belong to the *inkosi*. . . . choosing the money is the wrong option. We must all unite and choose the land . . . Let me just state the fact that we as your leaders want you to choose the land. When we receive the land, if you still want the R21,000, you can get it from us and we’ll keep the land.

For many of those present, the potential for conflict outweighed any positive benefits from additional land, especially if that land would be under customary tenure. Most individuals at the meeting already had access to land under customary tenure within eMbo-Timuni for both residential sites and a limited amount of farming, and therefore would only receive peripheral benefits from any expansion of the eMbo territory as envisioned by the *inkosi*. Ngcongo’s carefully phrased comment – that ‘if the land was the *inkosi*’s land, than it should be his, but that if land is to be distributed individually, compensation would be preferred’ – reflected the uncertainty among the meeting’s participants regarding both the role of the *inkosi* and the future distribution of any land gained through restitution. The customary leaders argued strongly in support of claiming land rather than monetary compensation by calling on people’s loyalty to the community and the ancestors and by tying the return of the land to the restoration of the community’s dignity. While they were asking participants to join as individual claimants for restitution, the references of the customary leaders to ‘community’ land implied to those present that any potential restitution of land would be subject to claims for jurisdiction by the *inkosi*. In this context, the *inkosi* and other customary leaders undoubtedly saw the land reform programme as an opportunity both to reassert their historical authority over land, and to expand the amount of territory under their control.

Throughout the meeting, participants continually referred back to the possibility of accepting monetary compensation in lieu of land from the government, while customary leaders kept returning to issues of land and political authority. In this impoverished rural area, residents were eager to participate in the restitution process because they saw an opportunity to gain something from the state, and to receive compensation for their suffering under apartheid. However, attitudes at the meeting suggested that the acquisition of new land was not, in and of itself, a high priority for anyone except for the customary leaders. Land was viewed more as a political resource than an economic asset. The importance of land as a political resource in Africa has long been highlighted by anthropologists,

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2 Monetary compensation provided by the government for land varies and it is unclear where participants at this meeting got the figure of R21,000.

3 The term ‘traditional community’ has gained popularity in politics as a way to refer to rural people living in a TA under the jurisdiction of customary leaders.
since Bohannan noted in the 1960s that in African societies ‘the political aspect of land – land as a territorial dimension of society – is dominant’ (Bohannan 1964, 134). Customary leadership, however, represented only a historically small part of the local politics of land in eMbo-Timuni, and current tenure practices there suggest that the influence of local customary leaders over land had been overstated. Within most TAs throughout KwaZulu-Natal, customary leaders had been widely regarded as responsible for allocating land that was open, either because it had never been allocated, or because it had been left empty by families that had moved away and given up their claims to land. However, as most of the land in eMbo-Timuni had been allocated by customary leaders decades ago, the exchange of land today occurs primarily between current residents and those requesting land for a place to live, with only minimal reference to or consultation with customary leaders. Recent national land legislation, however, ostensibly created to promote democracy in rural areas, has given customary leaders a central role in the allocation of land, a concentration of power that they have done their best to reinforce.

LAND AND CUSTOMARY AUTHORITY IN HISTORICAL PERSPECTIVE

The confusion expressed at the meeting in oGagwini over who has the authority to claim land under the government’s land reform programme stemmed, in part, from the history of land tenure in the region. For most of the last century and a half in southern KwaZulu-Natal, two different systems of land tenure have been enforced by the state. One centred on private property, while the other created a trust, under which land was held by ‘tribal’ groups and customary leaders controlled its distribution. These tenure systems emerged out of the system of indirect rule established during the second half of the nineteenth century in colonial Natal. As early as 1846, a few years after the annexation of Natal by Britain, ‘locations’ or ‘reserves’ for Africans were first established in the Natal colony (Welsh 1971, 12). These reserves were administered by customary leaders who were either appointed by the colonial state, or incorporated into the state as administrators. When the reserves were initially established, only a third to a half of the Africans who inhabited them were under the jurisdiction of hereditary customary leaders (Etherington 1989, 178). As a result, the colonial government had a policy of grouping people together to create ‘tribes’ and appointing a ‘chief’ over them from among those loyal to the state. This division of African residents into tribes was reinforced by policies such as collective responsibility for crimes and allowing customary leaders considerable power to create and enforce laws in their areas of jurisdiction. The state also secured the support of customary leaders, whether hereditary or appointed, through guarantees of access to land and financial rewards from the collection of taxes and fines.

4 Natal was a British colony, from 1843 until the Union of South Africa in 1910. Natal consisted of the southern portion of what is now the province of KwaZulu-Natal.
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(Etherington 1989, 174; Guy 1997). In the Umbumbulu region, most of the reserves were created from disparate groups of people and were led by customary authorities that had been appointed by the colonial state. A few, such as eMbo-Timuni, were formed out of already existing chiefdoms whose leaders were subsequently incorporated into colonial administration.

The implementation of indirect rule throughout Africa, by incorporating customary leaders into colonial administrations and creating ‘tribes’, frequently hinged on legislation related to customary land (Berry 2002, 643–4). As the authority of customary leaders was often predicated on their ability to grant land to their followers, the success of indirect rule then relied on the ability of colonial states to support the role of customary leaders in land allocation. However, the implementation of these colonial land policies was uneven and highly contested. In Natal, despite attempts to confine Africans to the reserves under the rule of customary authorities, there was, in reality, considerable diversity in land holding practices. Many Africans lived and paid rent on land owned by the state or by white absentee landlords, outside the jurisdiction of customary leaders. In addition, some Africans, including a few customary leaders, were able to acquire land as private property and to obtain citizenship and voting rights. This led to the development of a group known as the amakholwa, who lived outside chiefly jurisdiction and owned land privately or lived and farmed on mission stations. This division between the amakholwa and the ‘traditionalists’ who lived under customary leaders, was echoed in the comments defending M. J. Mkhize during the meeting in oGagwini in 2005.

In 1913, three years after the Union of South Africa was established, the Natives’ Land Act extended the system of reserves to the entire country and restricted African land ownership to these reserves. This legislation ushered in a new period of land evictions as communities living outside of the reserves were targeted for forcible removal, and those who owned land as private property were stripped of their rights without any compensation. The reserves constituted only 13 per cent of the land area in South Africa and consisted, especially in its western half, of some of the least desirable land in the country, much of it unsuited for agricultural production. Additional legislation aimed to consolidate the administration of reserves under the authority of customary leaders. This was an uneven process due to existing variations in ‘native administration’. While colonial administrators in Natal favoured a form of indirect rule, colonial administrators in other regions of the country had attempted to undermine the power of customary leaders. For example, in the Eastern Cape, the Glen Grey Act of 1894 allowed for the establishment of District Councils to rule over communities of freehold farmers who lived outside the jurisdiction of customary leaders (Ntsebeza 2005, 64–6). Under apartheid, the 1951 Bantu Authorities Act spearheaded a further push to standardize governance structures in the reserves under the authority of customary leaders appointed and supported by the state, and used to implement unpopular ‘development’ schemes. In particular the notorious ‘betterment’ planning involved villagization, cattle culling, the imposition of agricultural practices, and other unpopular measures.
In many areas of the country, rural resistance targeted customary authorities and their role in allocating land and enforcing betterment and other state policies (Mbeki 1964; Delius 1996; Ntsebeza 2005). As the tempo of the struggle against apartheid accelerated in the 1980s, civic structures were set up by organizations affiliated to the United Democratic Front (UDF), with help from the South African National Civic Organisation (SANCO), to take over some of the duties of customary authorities. While most resistance to customary authorities focused on the authoritarian nature of their powers, often described by Mamdani’s (1996) term ‘decentralized despotism’, there was also considerable resistance from rural residents who had been living as freehold farmers or rent-paying tenants for generations and resented the sudden imposition of new leaders appointed by the state. Drawing on the language of modernity, many of these communities referred to the rule of customary leaders as a movement ‘backwards’, as can be seen in the comment by the prominent rural activist Govan Mbeki, who noted that, ‘If Africans have had chiefs, it was because all human societies have had them at one stage or another. But when a people have developed to a stage which discards chieftainship . . . then to force it on them is not liberation but enslavement’ (quoted in Oomen 2005, 3).

However, the ability of customary leaders to act as ‘despots’ varied considerably throughout the country due to variations in local circumstances and the degree of interference or control by the state in different regions (Hart 2002, 69; Ntsebeza 2005, 253). Correspondingly, rural resistance to customary leaders was also uneven, and in KwaZulu-Natal, burgeoning Zulu nationalist movements and cultural groups throughout the twentieth century often brought together the more ‘modern’ amakholwa and the ‘traditional’ customary leaders in uneasy alliances in order to access land and pursue distinctly modern projects such as ‘development’ (Marks 1986, 1989; Cope 1990, 1993; Hart 2002). In addition, the implementation of unpopular development policies such as betterment schemes was uneven throughout the country and not all customary authorities were complicit in these ventures (for an analogous example from Zimbabwe see Moore 2005). In eMbo-Timuni, customary leaders were never asked to implement the more disruptive aspects of betterment planning such as villagization, and were correspondingly less likely to experience resistance to their rule. The inkosi of eMbo-Timuni was also able to derive considerable authority from his predecessors’ success in resisting attempts by the state to depose them during the first half of the twentieth century (for details see Sithole 1997). Therefore, in eMbo-Timuni, rural residents were less apt to view customary leaders as ‘despots’.

CUSTOMARY TENURE IN PRACTICE

In practice, there has been considerable variability in the role of customary leaders and government officials in controlling the distribution of rural land in South Africa. This continues to be evident in the post-apartheid period, particularly with the establishment of municipal government structures throughout the country after the 1995/6 elections. These new municipal councillors created yet
another group of office holders in rural areas whose jurisdiction over land was unclear. In Ntsebeza’s (2004, 2005) accounts of tenure practices in the Eastern Cape after the end of apartheid, he found tensions over responsibility for land allocation between customary leaders and these newly elected councillors, many of whom were members of SANCO. He reports that many rural residents expected elected councillors to take over land allocation, but found that, in the absence of new legislation, government officials would only recognize land titles or transfers approved by customary leaders, frustrating the efforts of residents to escape the often inefficient and exploitative rule of these leaders. In another study of post-apartheid land allocation in the Eastern Cape by Fay (2005), residents insisted that they decided as a community how to allocate land and frequently resisted attempts by the local headman to demand more fees than the community considered appropriate for witnessing these land transactions. Further diversity in communal tenure practices have been examined in freehold or amakholwa areas by Hart (2002), and in Zimbabwe by Moore (2005) where the postcolonial government has continued to implement betterment-style development schemes leading to displacement and strife.

By contrast, in eMbo-Timuni, there was relatively little controversy over the allocation and control of land. One of the elected government councillors for the region was an African National Congress (ANC) member who also played a double role as the principal induna\(^5\) under the inkosi in charge of land allocation. In eZimwini, another area of eMbo-Timuni, the elected councillor lived so far away that some residents did not even know his name or what his duties consisted of. Instead, if questions over land arose, they would turn to the local customary leader, who was called a traditional councillor.\(^6\) If he could not answer their questions, he would refer them to the principal induna and ANC councillor from the neighbouring ward.

Within eMbo-Timuni, unlike some of the previous examples from the Eastern Cape, there was no history of alternative leadership in the allocation of land. Civic structures were never established during apartheid, and there was considerable overlap between the recently elected municipal councillors and customary leaders. Despite this, however, evidence from actual practices suggested that the role in controlling land that customary leaders might once have exercised had been eroded by changes over the last half of a century, notably population growth and the reduced importance of agricultural production. EMbo-Timuni is an hour’s drive from a major urban centre, and most residents had long relied on wages from urban work and social grants\(^7\) rather than on farming. Referred to by Murray (1987) as examples of ‘displaced urbanization’, reserves throughout

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\(^5\) Commonly translated into English as ‘headman’, the induna is a customary leader appointed by an inkosi.

\(^6\) Traditional councillors are also customary leaders appointed by an inkosi, but they have less authority than an induna.

\(^7\) Social grants include both pensions and means-based child support grants. This system of social welfare has been greatly expanded in the post-apartheid period, and most households in eZimwini and oGagwini had members who were registered for some form of social grant.
South Africa were characterized by overcrowding, land degradation, minimal agricultural production and a reliance on migrant remittances. Similar trends in parts of East Africa were also noted by Shipton (1984), who claimed that scarcity of land to establish new households and to expand cultivation tended to correspond with a decline in the power of territorially defined chiefdoms and an increase in the control over land by segmentary lineages. As the population in parts of eMbo-Timuni increased, those who wanted to settle there turned instead to established residents to request land, which led to extensive subdivision of existing holdings. Surprisingly, this demand for residential land had not yet led to the development of a land market in eMbo-Timuni as has been described in studies of the effects of land scarcity on African tenure systems elsewhere (Downs and Reyna 1988; Peters 2004; Daley 2005; Chimhowu and Woodhouse 2006). Instead, most land allocation in eMbo-Timuni in recent decades has been based on social ties, particularly of kinship and marriage.

EMbo-Timuni is large relative to the size of other TAs in southern KwaZulu-Natal, with considerable variability in the density of its population. While areas along its borders are quite crowded, there are zones of underutilized land in its interior. Due to a lack of investment in infrastructure in the reserves by the apartheid state, many inhabitants have moved away from the interior to have easier access to public transportation, and hence to urban areas and employment opportunities. EZimwini, one of the most populous areas of eMbo-Timuni, is located at the very end of a tarred road that runs through several large sugarcane farms before joining a major highway. OGagwini, where the meeting took place to discuss the land reform process, is directly next to eZimwini. EZimwini and oGagwini cannot be described as towns as people continue to live in dispersed settlement patterns with farming areas adjoining residential sites. However, the importance of access to transportation means that people are clustered close to the main roads and that farms, particularly in eZimwini, have been decreasing in size over the last century. Most people engage in some farming, supplementing their diets through growing subsistence crops or their incomes through small-scale commercial farming of sugarcane in eZimwini, and of organic crops in oGagwini. Tenure practices in eZimwini and oGagwini are examined next.

According to the general narrative of land ownership in eZimwini and oGagwini, land belongs to the *inkosi* and is allocated by his principal *induna*, T. Z. Maphumulo. Induna Maphumulo also resolves any inheritance or boundary disputes that arise. While using land was generally considered a requirement for holding onto it, practice was somewhat more flexible. As long as a family resides on or uses a part of the land that they have been allocated, it is unlikely that their ownership of unused sections would be challenged, even if these areas are not used for many years. However, if a family moves away and does not leave anyone living on the land, they are generally considered to abdicate their rights.

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8 The organic farming in oGagwini was part of a project started a few years ago by a professor at the University of Natal in Pietermaritzburg to supply organic produce to major South African supermarkets from small-scale growers in oGagwini.
to it. Several households recounted making efforts to find distant family members to come and live on land when there were no heirs in order to hold on to it. For example, one man with two wives in two separate and non-contiguous households requested that his in-laws come and live with one of his wives, who had no children, because he wanted to keep the land that she was living on. He had planted some commercial trees on it and was concerned that if she moved in with his other wife, the inkosi would give the land to another family. On the other hand, however, a large piece of land in oGagwini that was empty and not cleared was known to belong to a family that had moved away, but had paid the inkosi a fee to keep the land open for them in case they decided to return at a later date.

Based on data collected in interviews with just over 100 senior members of households in eZimwini and oGagwini, surprisingly few currently resident families were allocated land directly by the inkosi or the induna. Several older residents knew that their families had received land from the inkosi after a succession dispute in the 1930s when the state divided eMbo in two and demanded that the followers of each inkosi relocate to the area designated by the state as belonging to each leader. A few other prominent families in oGagwini, including that of Induna Maphumulo, knew that their ancestors were allocated large amounts of land sometime between the 1930s and the 1960s. All of these families were given more land than they could use as there was no shortage of land at that time, and an expectation that the sons of those families would someday be able to use the surplus land. Over the last few decades, however, only two families recalled being granted land directly by the inkosi or induna, in both cases in the early 1990s. One family had been evicted from a white-owned farm, and the other family consisted of former residents who returned after fleeing during a time of political violence.

In contrast to the small number of recent land allocations by the inkosi, over one-third of currently resident families obtained land by asking other residents who would become their neighbours. These neighbours would grant land they were not currently using, thus subdividing their land. Subdivision occurred in a manner similar to inheritance, in that sons and occasionally daughters would ask their parents for land when they were ready to set up a household, which parents would then provide by subdividing their holdings. In fact, inheritance through the division of land after the death of parents was relatively rare; most land was subdivided earlier when a family member requested land, either of his or her living parents, or of his or her other siblings, to establish a new household. Just over half of the resident families in eZimwini and oGagwini interviewed were living on land that was inherited, usually from father to son. Inheritance practices, however, showed a considerable amount of flexibility. While sons were generally expected to inherit the land of their fathers, and daughters to receive land from their in-laws after marriage, in practice a good number of daughters received land from their fathers or brothers upon request. For example, a married couple fleeing political violence or searching for a new home after being evicted from a farm would often turn to the women’s relatives if they had land.
available. In addition, widowed women or those wanting to leave their husbands also requested land from their fathers and brothers. Even sons-in-law or brothers-in-law were used as a means of obtaining land by relatives who wished to live closer to the roads or needed to find a new place of residence. Most cases of land subdivision occurred between relatives with either kinship or marriage claims on the generosity of the land holders. It was very rare in these cases, no matter how distant the kinship claim, for money to be exchanged for the land. It was mostly in the exchange of land between non-kin that money was paid, and yet not every case of non-kin exchange involved monetary payment. Of the seven cases in the interviews conducted for this study where money was exchanged for land, four involved fees of less than R500, while only three were payments of R1000 or more.

On the other hand, payments to the induna were relatively common. About a fifth to a quarter of the residents had paid the induna to witness the transfer of land. The fees seemed to have changed little over the years, and ranged from about R70 to R500, with the higher fees reserved for the witnessing of land transfers between non-kin involving monetary payment. There were no clear rules concerning when land transfers needed to be witnessed by the induna. In one case, a family that had received land from their neighbour a decade before observed that they should and would pay the induna, but did not know when they would get around to it. Other families, after consulting the traditional councillor, were told that they did not need to have the induna witness the exchange because they were close kin of those from whom they were receiving land or a new household was being established within a stone’s throw of an existing household. Induna Maphumulo, who was in charge of witnessing land transactions, was also known for supporting women’s rights to land during inheritance disputes, probably in part due to his ANC affiliation. The fee that he charged was clearly on a sliding scale, varying according to the size of the land and whether or not the transaction had a monetary component. The induna’s fees were not spoken of as an undue burden by residents. In many ways, it was regarded as a registration fee, with the accompanying guarantee that the induna would remember and support the rights of that household to the land after it had been ‘registered’ with him.

In short, the emphasis of successive governments from the colonial period through to today on the role of customary leaders in controlling and allocating land can easily obscure the workings of various arrangements and powers vested with some degree of control over the distribution of land. Referred to by Gluckman (1965) as ‘estates of administration’, various levels of political authority, from amakhosi, through izinduna, traditional councillors, lineage heads, household heads and even wives, can all exercise some measure of control. In addition, the extent to which these various levels or types of political authority and entitlement are actively involved in controlling land often depends on economic and environmental conditions in a particular area. Bruce (1988) suggested that customary authorities have a more important role in land allocation during times of migration, but that as land becomes settled and plots smaller, the focus of
control shifts to the extended family, prompting courts in Ghana and Nigeria to refer to land under customary tenure as ‘family land’. In an extensive study of land allocation in the Valley of a Thousand Hills in KwaZulu-Natal, Preston-Whyte and Sibisi (1975) found that lineage segments exerted more control than customary leaders. They also found that residents, who relied on migrant wages, were subdividing their land and granting it to both kin and non-kin who had some claim on their generosity in order to build up networks of clients and supporters, creating a densely populated region with pockets of loosely related kin and clients very similar to the situation found in eMbo-Timuni. Preston-Whyte and Sibisi also found (1975, 306), as did Reader (1966, 67), that in KwaZulu-Natal women were able to claim land from their own kin, and not just from their in-laws, under a variety of circumstances including divorce, widowhood, or if the married couple simply preferred to live with the woman’s kin due to the availability of more and/or better land.

In short, in eMbo-Timuni customary authorities have been reduced, by the scarcity of land for them to allocate, to mostly supervisory roles in the distribution of land that is controlled primarily by households. However, over the last decade, as the post-apartheid government has created new legislation to ‘democratize’ rural local governments, customary leaders have been able to reassert their role in land allocation as a justification for regaining, retaining or even expanding their power over land. Land reform, with its creation of new tenure rules and arrangements, has been seized by customary leaders as a new avenue to exercise their powers.

REFORMING TENURE AND RURAL GOVERNANCE

After 1994, there was a widespread expectation among many ANC supporters living in rural areas that the new government would move immediately to dismantle the institutions of chieftainship. After decades of resistance to customary leaders, particularly in the Eastern Cape bantustans where SANCO was most active outside the cities, the ANC was expected to continue to support the dynamic of change towards more democratic forms of local government that was started by the civics movement (Ntsebeza 2005). Municipal elections in 1995/6 installed elected local councillors throughout the country, but some of their competences remain unclear because of the claims of customary leaders. The ANC, in turn, has been reluctant to challenge key aspects of the authority of customary leaders, particularly in allocating land. In an attempt to reform tenure and rural governance, after a decade of negotiation and discarded draft bills, the national government finally signed into law two bills, the Traditional Leadership and Governance Framework Bill of 2003 and the Communal Land Rights Act (CLRA) of 2004. These two bills accord considerably more power to existing customary authorities than in any of the previous drafts over the last decade.

Several explanations have been put forward for the reluctance of the ANC to challenge the power of customary authorities in rural areas. Oomen (2005, 3) suggested that the influence of the ‘new global order’, such as the rise of ethnic
nationalisms and promotion of group rights, must be seriously considered ‘when even South Africa, just stepping out of a nightmare scenario as regards the abuse of culture, chose to make diversity a founding stone of its new order’. In more local level explanations, the ANC’s concessions to customary leaders have been attributed to its objective of gaining political control of the province of KwaZulu-Natal (Ntsebeza 2004; Beall et al. 2005; James et al. 2005). The Inkatha Freedom Party (IFP), a Zulu nationalist political party, has long been supported by the majority of customary leaders in KwaZulu-Natal, an alliance that was considered crucial to the IFP’s slim electoral majority in the province from the 1994 to the 2004 elections. In addition to subsequent political expediency, even during the transition from apartheid some were concerned that the ANC was ambivalent about dismantling the chieftainship, as the mass democratic policies of the UDF were compromised by the ‘elite pacting’ of the transitional process (Levin and Weiner 1996).

The Framework Bill and the CLRA are presented as democratizing rural local government through decentralization. The CLRA starts with the statement that the Act will ‘provide for legal security of tenure by transferring communal land . . . to communities . . . to provide for the conduct of a land rights enquiry to determine the transition from old order rights to new order rights; to provide for the democratic administration of communal land by communities’ (Republic of South Africa 2004). The Framework Bill aims to replace customary leaders with ‘traditional councils’, initially required to have only 25 per cent of their members elected with the rest appointed by the ‘principal traditional leader concerned in terms of custom’ (Republic of South Africa 2003a). The former was subsequently increased to 40 per cent, due to strong protests, including from civic organizations (Republic of South Africa 2003b; Ntsebeza 2004, 18). The CLRA of the following year then stated that the powers and duties of the land administration committee may be exercised by the traditional councils established under the Framework Bill. On the whole, this new legislation appears to give a considerable amount of power and influence to customary leaders over the allocation of land in rural areas, and certainly more than was evident in its earlier drafts.

As might be expected, the new legislation has been praised by customary leaders and criticized by civics and Non-Governmental Organizations (NGOs). NGOs have been concerned primarily with the lack of protection for women’s rights to land, arguing that government is giving too much power to undemocratic customary leaders who are not so much ‘traditional’ as they are a product of apartheid’s version of ‘decentralized despotism’ (Claassens 2005; Cousins 2005). In addition, many people currently living outside of the jurisdiction of customary leaders have expressed concern that CLRA will erode alternative forms of land tenure and bring them under the authority of any customary leaders who claim jurisdiction over them (PLAAS 2003). While both the Governance Framework Bill and the CLRA stipulate that at least 30 per cent of appointees to their committees and councils be women, it is unlikely that this will do much to change current practices of inheritance and marriage.
that disadvantage women in accessing land. Criticism of the Bill and Acts has drawn fierce attacks by customary leaders and their political organization CONTRALESA (Congress of Traditional Leaders of South Africa). Patekile Holomisa, an ANC MP and president of CONTRALESA, wrote in an opinion piece that '[t]he Communal Land Rights Act, 2004 is a progressive piece of legislation that promotes gender inclusivity and democracy while giving due recognition to traditional leadership. Opponents of the act are wasting their apparently vast resources if they think the role of traditional leaders over land can ever be diminished' (Holomisa 2004).9

LOCAL ENGAGEMENTS WITH LAND REFORM

Struggles over land in postcolonial Africa have been as much about power and the legitimacy of competing claims to authority, as about control of property per se. That these debates often turn on narratives of colonial oppression or supposedly timeless ‘tradition’ does not make them any less relevant to current struggles over power and resources . . . The significance of land conflicts for contemporary processes of governance and development in Africa lies not only in the way they have been shaped by past events, but also in their salience as arenas for the production of history. (Berry 2002, 639–40)

During the negotiations leading to the end of apartheid, considerable pressure was brought to bear on the ANC to ensure that private property rights would be protected in the post-apartheid period. The land reform programme that resulted from these negotiations had three distinct components: redistribution, restitution and tenure reform. The first two have been underway since the mid-1990s with tenure reform only now being tackled through the CLRA. Redistribution follows a ‘willing buyer, willing seller’ approach in which government acquires land from commercial owners (usually white farmers) for distribution to previously disadvantaged communities, who pay with grants provided by government. This was billed as a needs-based programme. Land restitution is a rights-based programme to restore the land rights of those dispossessed by the 1913 Land Act who can provide evidence of their eviction (Kariuki 2004; James et al. 2005). Those who qualify under the stricter standards of restitution often consist of wealthier African landowners, such as the amakholwa in KwaZulu-Natal, who were able to buy land or lived on mission stations in the late nineteenth and early twentieth centuries. Restitution has been the most visible aspect of land reform, and many individuals and groups that were not intended to be covered by its provisions have nonetheless lodged restitution claims. As James

9 Note that the same CONTRALESA has vehemently opposed some of the specific legislation proposed to implement the commitment of the South African constitution to gender equality, for example, concerning ‘African customary marriages’ and domestic violence (Henry Bernstein, personal communication, referencing Lodge 2002, 174, 214).
et al. note: ‘Sectors of society beyond the classic “black spot”/restitution constituency have latched on to the discourse linking restored land with restored citizenship: many farm workers and tenants, although their land rights are officially designated for protection under other legislation, have lodged land claims and are distressed at the state’s failure to settle these’ (2005, 825).

In the Umbumbulu and Eston areas of Natal, land alienation began in the second half of the nineteenth century, when large swathes of prime agricultural land were granted to white farmers by the colonial state. This created the large area adjacent to eMbo-Timuni that was designated for white ownership throughout most of the twentieth century, and occupied primarily by large-scale sugarcane farms. By the 1990s, some of this land was owned by Illovo Sugar, South Africa’s largest sugar producer, which sold portions of it as part of a Black Economic Empowerment (BEE) project.12 Most of the new black owners of this cane land were not from eMbo-Timuni or neighbouring TAs but from urban areas farther away. They do not perceive themselves as under the jurisdiction of customary leaders, or their land as falling within the boundaries of TAs and they run their farms as commercial ventures on private property governed by the same rules as white-owned farms in the area.

It is these commercial sugarcane farms, now under black and white ownership, that are claimed by both eMbo and the Masibuyele Trust. The Masibuyele claim has been filed under the land restitution process and yet does not fit easily within the rights-based approach officially advocated by the programme. In Umbumbulu and Eston, most commercial farms have registered titles going back well before the cut-off date of 1913. Aerial photos and documents from the Land Registry office suggest that, with the exception of a few known ‘border’ conflicts, boundaries between commercial farms and the reserves areas have remained relatively fixed for well over a century. In effect, the eMbo and Masibuyele Trust claims combine broad narratives of group dispossession with more specific individual memories of evictions, of labour tenants and of ‘squatters’. While most of the commercial farmland in question has long been registered as private property, the history of its usage is much less clear. Some of the initial nineteenth-century land grants covered vast areas, and it is unlikely that early colonial land grantees were able or willing to enforce their property rights by removing every resident African household. In addition, over the subsequent century and a half, there was often movement into and out of these properties as African communities, facing severe land shortages, occupied unused portions of land and sections set aside for labour tenants. Some farms owned by Illovo

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10 Apartheid forced removals often referred to African (purchased) freehold property in areas now designated for white ownership as ‘black spots’. Land restitution was primarily intended to restore land to those removed from ‘black spots’ or otherwise compensate them.

11 The Land Reform (Labour Tenants) Act 3 of 1996 was intended to provide for the security of labour tenants, protecting them against eviction and allowing them to apply for ownership rights or compensation for land that they have occupied.

12 On Black Economic Empowerment and its agricultural arm AgriBEE applied to the South African wine industry, see Williams (2005).
Sugar, for example, fell into disuse at certain points and were quickly occupied by residents of the neighbouring TAs to build houses and farm small plots. In addition, these ‘squatters’ remained subject to the authority of local amakhosi. In the memories of local residents, therefore, the history of land entailed several periods of residence in and eviction from specific parts of the zones designated for white ownership, and amakhosi remember these migrations of their ‘subjects’.

Customary leaders also have their own narratives of claims to land additional to those just outlined. The eMbo amakhosi stake their claim as descendants of the leaders of the first settlement, probably in the 1830s after the Mkhizes fled south to escape the Zulu king, Dingane (Bryant 1929, 415). EMbo is one of the largest chiefdoms in southern KwaZulu-Natal, and grew by allowing smaller chiefdoms to settle subsequently on the lands it regarded as within its jurisdiction (Reader 1966, 24). EMbo amakhosi therefore claim a legitimate authority greater than that of many other smaller amakhosi in the region, both geographically and ideologically – because they established their authority prior to colonial conquest and were not created amakhosi by colonial appointment, even though they were later incorporated into the colonial state. The current inkosi of eMbo-Timuni often displays this sense of authority through attempts to treat neighbouring commercial farmers as if they were subject to his jurisdiction. Commercial farmers reported frequent visits from the inkosi requesting tribute or making claims to their land and its farm houses and other buildings. Such assertion is ‘colour blind’, applied in the same fashion to recently arrived black (BEE) commercial farmers as to long established white farmers. While many see this as merely extortionate behaviour by the inkosi, it also reflects attempts to keep alive the idea that all of this land should be under his jurisdiction. Even though Inkosi Mkhize almost universally failed in his attempts to exhort money or claim houses for himself, his actions involved the pretence that neighbouring commercial farmers are his subjects.

The claims of the eMbo and Masibuyele groups did not easily fit the framework of the land restitution process because their historical case pre-dated the 1913 cut-off date for restitution, and because many of the individual claims should have been handled under labour tenancy laws. Despite this, the DLA showed considerable interest in them and a willingness to take them on under its land restitution mandate. In any case, the DLA sought to avoid the full juridical process of restitution through the specially established Land Claims Court, which soon proved to be both expensive and slow and placed excessive demands on an understaffed DLA to research land claims thoroughly – including rival claims to the same land by different groups of Africans (see further below). As a result, the DLA had shifted towards resolving land claims through negotiated settlements both of land and of monetary compensation (Nauta 2004, 92–4). No doubt there was also a political hope that the experience of negotiation would help to integrate rural regions divided by different forms of government and land use within South Africa’s long history of racial domination.

The DLA’s emphasis on negotiation frustrated some white farmers in Umbumbulu and Eston who had mobilized together to fight restitution claims
in the Land Claims Court, hiring lawyers, gathering documentation, and so on. The DLA pressed them to negotiate, and asked them to identify portions of their landed properties they would be willing to sell to the government. While some white farmers expressed dissatisfaction with the gap between the legal framework of restitution and the reality of compromise and negotiation advocated by the DLA, many newly arrived black commercial farmers expressed views much closer to those of the government. One noted that it would be a shame if he had to sell his farm as one of the few successful beneficiaries of Illovo’s Black Economic Empowerment programme. Yet he also felt that it would be futile to hold on if neighbouring communities started to fight with him and burn his cane fields because they felt that the land occupied by his farm was rightfully theirs.

Given the political need for some form of redress, the financial costs of juridical settlement of restitution claims and the political costs of a mounting backlog of claims, the DLA’s emphasis on negotiating land transfers to resolve community-based restitution claims in rural areas may have been a practical necessity. However, the openness of negotiation created the potential for conflict within impoverished communities over issues of leadership and the distribution of benefits. Local conflicts over authority to submit claims to rural land have considerably slowed the process of restitution throughout the country (see also Kariuki 2004, 8, 15). DLA figures, released in December 2004, showed that approximately 85 per cent of urban restitution claims had been settled as opposed to only 33 per cent of rural claims (Jacks 2005). As one government official stated, the latter are much more challenging as they are ‘mostly community-based group claims, and it is not as easy to deal with them as with individual claims. There are issues of leadership and conflict in some areas’ (Jacks 2005). As the DLA official working with the Umbumbulu/Eston claims noted, the DLA encourages people to apply as a group. These groups tend to correspond with the boundaries of the TA to which their members belong, hence are under the authority of an inkosi and are likely to be led by an inkosi or his deputies. Some DLA officials in KwaZulu-Natal also seemed reluctant to challenge the authority of the amakhosi when disputes arise. In a conflict over land restitution studied by Charles Chavunduka, in which a local inkosi challenged the claim of a group of labour tenants by forming his own rival group, the Regional Land Claims Commissioner was inclined to favour the inkosi’s group over the labour tenants (personal communication 7 January 2006). In another study of a rural conflict in Impendle, Drimie also found tension between labour tenants on land that was targeted for redistribution and neighbouring areas under the authority of customary leaders who also claimed the land based on pre-1850 colonial dispossession. In this case, an inkosi filed a restitution claim in an attempt to block a redistribution project from proceeding (Drimie 2002, 112–16). There is no doubt that in many of these cases in rural KwaZulu-Natal, the power of customary authorities over land is being enhanced due to their leadership roles in land claims, with or without the support of their ‘subjects’.

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CONCLUSION

Compared with other regions in South Africa, historical changes in land allocation and tenure practices in eMbo-Timuni probably emerged more frequently from economic shifts than from state intervention. Population increases had led to smaller plots and densely settled land, which had shifted control from customary leaders to lineage segments and families. The recent land reform process, however, was seen by customary leaders as an opportunity to reassert their authority over land through potentially gaining control over new land outside the current boundaries of their TA. In some cases this included particularly valuable land due to investments in developing it for commercial agriculture over the last century. However, the attempts by customary leaders in eMbo-Timuni to control the process of land claims at times conflicts with the agendas of their own ‘subjects’ and of other communities and groups claiming the same land. The bid for control by customary leaders was aided by the government’s tendency to work with them in resolving restitution claims and by recent legislation like the CLRA. Civil society groups, such as the Masibuyele Trust led by M. J. Mkhize, pose a threat to customary leaders not only because they claim land that the amakhosi would like for themselves, but also because if their claim succeeded, this would exemplify the rights of groups without even the nominal jurisdiction of any customary leader. Alternative forms of land ownership for blacks have not been possible since amakholwa freeholders were dispossessed in the wake of the 1913 Natives Land Act. In this sense, customary leaders saw the very existence of a civil society group claiming land as a threat to their powers under apartheid’s bantustan regimes. Ntsebeza (2004, 2005) argues forcefully that customary leaders are unwilling to give up their powers and privileges in rural areas granted by the apartheid state, and the salaries and benefits that accrue from formally constituted office as a ‘traditional authority’. As currently implemented, land reform practices seem more likely to bolster such powers and privileges, rather than promote democratization. And this may yet lead to new conflicts even in areas like eMbo-Timuni where, historically, the allocation of land under customary tenure has generated little contestation.

REFERENCES


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